

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

KRISHNA MOTE,

Plaintiff

v.

CAPTAIN JAMES MURTIN, et al.

Defendants

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3:20-CV-92
(JUDGE MARIANI)

ORDER

AND NOW, THIS 20th DAY OF FEBRUARY, 2020, upon *de novo* review of

Magistrate Judge Carlson's Report and Recommendation ("R&R") (Doc. 8), Plaintiff's

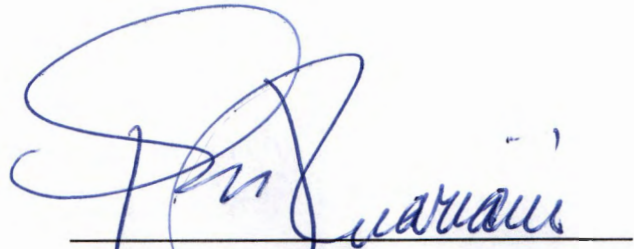
Objections thereto (Doc. 9), and all other relevant filings, **IT IS HEREBY ORDERED THAT:**

1. Plaintiff's Objections (Doc. 9) are **OVERRULED**.¹
2. The R&R (Doc. 8) is **ADOPTED** for the reasons stated therein.
3. Plaintiff's Motion for Leave to Proceed *in forma pauperis* (Doc. 2) is **GRANTED**.

¹ Although Plaintiff does not dispute that the allegations and causes of action in the present complaint are similar to, if not the same as, those in his prior action (Case No. 4:07-cv-1571), his first Objection asserts that because his first lawsuit was dismissed without prejudice over ten years ago, Plaintiff can now "refile[] in the District Court" an action "concerning the same matter" and "start the process all over again." (Doc. 9, at 3, 4). Mote asserts that because the first action was filed within the statute of limitations, when the action was dismissed without prejudice, "the action was not a final and appealable order" and the time was tolled. (*Id.* at 4). Aside from Plaintiff's misunderstanding of the applicable time limits with respect to the timely filing of a new action or amended complaint when a case or cause of action has been dismissed without prejudice, this Court notes that the dismissal order in the prior action explicitly states that "[a]ll of Plaintiff's claims arising under 42 U.S.C. § 1983 are hereby DISMISSED WITH PREJUDICE" (see Case No. 4:07-cv-1571, Doc. 42 at ¶ 3(A)) (capitalization in original). Only Plaintiff's pendent state claims were dismissed in that action without prejudice. (See *id.* at ¶ 3(B)). Plaintiff's other Objection argues that, due to the incident at issue in his complaint, he suffers from "permanent physical and mental damage" (Doc. 9, at 6). Plaintiff does not contend that he only became aware of these injuries within the last two years such that he only recently knew, or had reason to know, of these injuries.

4. Plaintiff's Complaint (Doc. 1) is **DISMISSED WITH PREJUDICE**.

5. The Clerk of Court is directed to **CLOSE** this action.

A handwritten signature in blue ink, appearing to read "R. Mariani", is written over a horizontal line.

Robert D. Mariani
United States District Judge